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*PDG entered
10/26/01*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 RICHARD CHEN,

16 Defendant.

No. 00-40165 DLJ

PLEA AGREEMENT

17 I, Richard Chen, and the United States Attorney's Office for the Northern District
18 of California (hereafter "the government") enter into this written plea agreement (the
19 "Agreement") pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure:

20 The Defendant's Promises

21 1. I agree to plead guilty to count fifty five of the captioned indictment
22 charging me with mail fraud in violation of 18 U.S.C. §1341. I agree that the elements of
23 the offense and the maximum penalties are as follows: (1) that I participated in a plan to
24 obtain money by making false statements; (2) I knew the statements were false when
25 made, (3) the statements were material, that is, that they were of a kind that would

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1 reasonably influence a person or company to part with the money; (4) that I acted with
2 intent to defraud and (5) that I used or engaged in a scheme in which contemplated the
3 use of the United States mail or private or commercial interstate carrier.

4	a.	Maximum prison sentence	5 years
5	b.	Maximum fine	\$250,000
6	c.	Maximum supervised release term	3 years
7	d.	Mandatory special assessment	\$100
8	e.	Restitution	To be determined but at
9			least \$1.5 million

10 2. I agree that I am guilty of the offense to which I will plead guilty, and I
11 agree that the following facts are true and correct:

12 a. In February, 1993, I was a principal of Golden Pacific Plastics
13 Manufacturing Corporation, Inc. ("Golden Pacific"). As a principal of Golden Pacific, I
14 had knowledge of and was one of the persons responsible for negotiating the contracts of
15 sale of the plastic bags manufactured by Golden Pacific, and for a part of the overall
16 management of Golden Pacific, together with my daughter, Voni Chen, the President of
17 Golden Pacific.

18 b. In mid 1994 and continuing to in or about June 1996, Golden Pacific
19 experienced cash flow problems. To meet the cash needs of Golden Pacific, Voni Chen
20 and I, together with Michael Ferguson, knowingly participated in a scheme to defraud and
21 falsely to obtain loans from Bay Business Credit. The scheme to defraud was in
22 substance as follows.

23 c. Beginning in or about mid 1994, and continuing to ^{mid}late 1996
24 Voni Chen and I, together with Michael Ferguson, participated in a scheme fraudulently
25 to receivables financing from Bay Business Credit ("BBC"). We did so by causing
26 Golden Pacific to send the false invoices to BBC. In fact the transactions were false, and
27 the customers had neither made bona fide orders for the merchandise nor were they

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1 obligated to pay for it. We then caused Golden Pacific to send the false invoices to Bay
2 Business Credit ("BBC") pursuant to a financing agreement with BBC, and BBC loaned
3 money to Golden Pacific based on the false invoices.

4 d. In order to effect our scheme, we asked a number of companies,
5 including Global Supply Company and Forever Enterprises Corporation, to act as
6 customers of Golden Pacific when in fact they had never bought merchandise from
7 Golden Pacific. In addition, Voni Chen and I asked certain of our legitimate customers,
8 including Flamingo Industries USA Ltd., Global Packaging Products, and Central Bag
9 Company, to act as if they had purchased more goods from us than they in fact had. In
10 some cases we simply submitted false invoices to BBC without the knowledge of the
11 corporate entity. Finally, in some cases we created shell corporations which we
12 controlled to act as fake customers of Golden Pacific.

13 e. As a further part of the scheme, and to prevent detection by BBC of
14 the scheme, for many of the invoices we caused Golden Pacific to provide money to the
15 co-schemers to repay BBC the money owed on the false invoices. In many of these cases
16 we sent the money to the customers through Associated Plastics, a shell company we
17 formed for the purpose of concealing the fact that we were sending funds through the
18 customers: BBC's auditors were told that Associate Plastics was a supplier of Golden
19 Pacific. Our purpose in sending money to our customers to repay BBC was to make it
20 appear as if co-schemers were repaying the loans with their own funds and therefore that
21 the false transactions were legitimate.

22 f. In furtherance of the scheme, we directed our accountant and co-
23 conspirator Michael Ferguson to create false financial statements and other books and
24 records of Golden Pacific which misrepresented Golden Pacific's financial condition, by
25 among other things, making the false invoices appear legitimate. In order to conceal the
26 fraud and to lull BBC into a false sense of security, we submitted these false financial
27 statements and books and records to BBC for review as required by the terms of the

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1 financing agreement with BBC.

2 g. Based on the submission of false invoices, bills of lading and other
3 documents to BBC, BBC agreed to loan to Golden Pacific over \$5 million, a substantial
4 amount of which was secured by fictitious receivables created by the sham transactions.

5 h. On or about March 18, 1996, for the purpose of executing the
6 scheme to defraud, and to obtain money by false pretenses and representations, I caused
7 to be delivered by United States mail or private or commercial interstate carrier, Golden
8 Pacific Invoice #3278, dated May 14, 1996 reflecting merchandise sold to Norsesea
9 Packaging in the amount of \$9,240.00 from Golden Pacific, Houston, Texas, to BBC in
10 Walnut Creek, California, in violation of 18 U.S.C. § 1341.

11 2. I agree to give up all rights that I would have if I chose to proceed to
12 trial, including the rights to a jury trial with the assistance of an attorney; to confront and
13 cross-examine government witnesses; to remain silent or testify; to move to suppress
14 evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery
15 from the government; and to pursue any affirmative defenses and present evidence.

16 3. I agree to give up my right to appeal my conviction, the judgment,
17 and orders of the Court. I also agree to waive any right I may have to appeal my sentence
18 provided is within the Guidelines range set forth in this agreement. I agree not to file any
19 collateral attack on my conviction or sentence, including a petition under 28 U.S.C.
20 §2255, at any time in the future after I am sentenced, except for a claim that my
21 constitutional right to the effective assistance of counsel was violated.

22 4. I agree not to ask the Court to withdraw my guilty plea at any time
23 after it is entered.

24 5. I agree that the Court may order and I will make a good faith effort to pay
25 restitution for all the losses caused by the scheme to defraud in which I knowingly and
26 intentionally participated, and not merely the losses attributable to the count of
27 conviction. The parties agree that the amount of restitution will be set by the Court, but
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1 in no event is less than \$1,500,000. Before or after sentencing, I will, upon request of the
2 Court, the government, or the U.S. Probation Office, provide accurate and complete
3 financial information, submit sworn statements and give depositions under oath
4 concerning my assets and my ability to pay, surrender assets I obtained as a result of my
5 crimes, and release funds and property under my control in order to pay any fine,
6 forfeiture, or restitution. I agree to pay the special assessment of \$100 at the time of
7 sentencing.

8 6. I agree that the Sentencing Guidelines should be calculated as
9 follows, and that I will not ask for any other adjustments to, reductions or downward
10 departures from this offense level. :

11 **Fraud Guidelines**

12	a.	Base Offense Level, U.S.S.G. § 2F1.1:	6
13			
14	b.	Amount of loss, U.S.S.G. § 2F1.1 (B)(1)(P):	12
15		(\$1.5-\$2.5 million)	
16	c.	Specific Offense Characteristics	
17		(1) U.S.S.G. § 2F1.1(b)(2)	2
18		(More than minimal planning)	
19	d.	Acceptance of responsibility:	2
20		(If I meet the requirements of U.S.S.G. § 3E1.1)	
21	e.	Adjusted offense level	18
22			

23 7. With regard to the acceptance of responsibility provision of the Guidelines,
24 I agree that I did not notify the authorities of my decision to plead guilty in a timely way,
25 and thereby permit the government to avoid preparing for trial and that, accordingly, I
26 will not ask the Court for the reduction of an additional point under U.S.S.G. § 3E1.1(b).

27 8. I agree that, regardless of any other provision in this agreement, the

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1 government may and will provide to the Court and the Probation Office all information
2 relevant to the charged offenses or the sentencing decision. I also understand that the
3 Court is not bound by the Sentencing Guidelines calculations above, the Court may
4 conclude that a higher or lower guideline range applies to me, and, if it does, I will be
5 entitled to withdraw my guilty plea.

6 9. I agree not to commit or attempt to commit any crimes before
7 sentence is imposed or before I surrender to serve my sentence. I also agree not to violate
8 the terms of my pretrial release (if any); intentionally provide false information to the
9 Court, the Probation Office, Pretrial Services, or the government; or fail to comply with
10 any of the other promises I have made in this Agreement. I agree that, if I fail to comply
11 with any promises I have made in this Agreement, then the government will be released
12 from all of its promises below, but I will not be released from my guilty plea.

13 10. In entering into this plea of guilty, I recognize that my conviction could well
14 result in an order of deportation. I have had adequate time to consult with counsel,
15 including immigration counsel, on this subject.

16 11. I agree that this Agreement contains all of the promises and
17 agreements between the government and me, and I will not claim otherwise in the future.

18 12. I agree that this Agreement binds the U.S. Attorney's Office for the
19 Northern District of California only, and does not bind any other federal, state, or local
20 agency.

21 The Government's Promises

22 13. The government agrees to move to dismiss any open charges pending
23 against the defendant in the referenced information at the time of sentencing.

24 14. The government agrees not to file or seek any additional charges
25 against the defendant that could be filed as a result of the investigation that led to the
26 captioned indictment.

27 15. The government agrees to recommend the Guidelines calculations

1 set out above.

2 Agreement Regarding Sentence of Incarceration

3 16. The parties further agree that under Rule 11(e)(1)(C) the appropriate
4 imprisonment is a period of incarceration falling within the guideline range appropriate to
5 the adjusted offense level set forth in paragraph 6 of this agreement. The parties make no
6 agreement under Rule 11(e)(1)(C) as to any other component of the sentence. Should the
7 Court decline to accept this agreed guidelines calculation, it is agreed that the defendant
8 or the government may withdraw from this plea agreement.


9 The Defendant's Affirmations

10 17. I confirm that I have had adequate time to discuss this case, the
11 evidence, and this Agreement with my attorney, and that he has provided me with all the
12 legal advice that I requested.

13 18. I confirm that while I considered signing this Agreement, and at the
14 time I signed it, I was not under the influence of any alcohol, drug, or medicine.

15 19. I confirm that my decision to enter a guilty plea is made knowing the
16 charges that have been brought against me, any possible defenses, and the benefits and
17 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty
18 is made voluntarily, and no one coerced or threatened me to enter into this agreement.

19
20 Dated: 10/26/2001


Richard Chen
Defendant

21
22 DAVID W. SHAPIRO
United States Attorney

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24 Dated: 10/26/21



Mark N. Zanides
Assistant United States Attorney

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27 Defense Counsel's Attestation

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1 I have fully explained to my client all the rights that a criminal defendant has and
2 all the terms of this Agreement. In my opinion, my client understands all the terms of this
3 Agreement and all the rights he is giving up by pleading guilty, and, based on the
4 information now known to me, his decision to plead guilty is knowing and voluntary.

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6 Dated: 10-26-01


John Donahue
Attorney for Defendant
Richard Chen

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